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1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 18-23538-shl

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5 In the Matter of:

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7 SEARS HOLDINGS CORPORATION,

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9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 November 3, 2022

17 2:08 PM

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21 B E F O R E :

22 HON SEAN H. LANE

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: A. VARGAS

1 HEARING re Omnibus Hearing

2
3 HEARING re Doc. #10661 Motion Of The Chubb Companies For
4 Entry Of An Order (I) Ruling That Default Judgment,
5 Settlement Agreements And State Court Orders Are Void Ab
6 Initio Pursuant To 11 U.S.C. I 05(a) and 362(a) And Without
7 Effect; And (II) Granting Related Relief

8
9 HEARING re Doc. #10648 Second Final Joint Application of
10 Paul E. Harner, as Fee Examiner and Ballard Spahr LLP, as
11 Counsel to the Fee Examiner, for Allowance of Compensation
12 for Professional Services Rendered and Reimbursement of
13 Actual and Necessary Expenses Incurred from July 1, 2022
14 Through August 31, 2022

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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8 ALSO PRESENT TELEPHONICALLY:

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12 NATAN BANE

13 BRIANNA B. BLITTER

14 KEVIN ECKHARDT

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17 JENNIFER SUE KOOCKOGEY-LAJOIE

18 CHRISTOPHER STAUBLE

19 JOSEPH SZYDIO

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P R O C E E D I N G S

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2 THE COURT: Good afternoon. This is Judge Sean
3 Lane in the United States Bankruptcy Court for the Southern
4 District of New York, and we are here for the afternoon
5 calendar, which starts at 2:00 with Sears Holding
6 Corporation, a Chapter 11 case and omnibus hearing. So let
7 me find out who is here on behalf of the Debtors. Oh, hold
8 on a second. Good afternoon. This is Judge Sean Lane in
9 the United States Bankruptcy Court for the Southern District
10 of New York, and we are here this afternoon for an afternoon
11 calendar starting at 2:00, and the matter that's on for 2:00
12 is Sears Holding Corporation, a Chapter 11 case. So we'll
13 start by getting appearances. Let me find out who's here on
14 behalf of the Debtors.

15 MR. DIDONATO: Hi. Good afternoon, Your Honor.
16 Phil DiDonato, Weil Gotshal for the Debtors, and I'm here
17 with Garrett Fail as well.

18 MR. FAIL: Good afternoon, Your Honor.

19 THE COURT: All right. Good afternoon. And let
20 me find out who's here on behalf of the Official Committee.

21 MR. DIDONATO: Your Honor, the Chapter 11 plan
22 went effective --

23 THE COURT: Oh.

24 MR. DIDONATO: -- and we filed a notice, so the
25 Committee has been disbanded.

1 THE COURT: All right. Thank you very much. So
2 let me find out who's here on behalf of The Chubb Companies
3 who filed the motion.

4 MS. HEITZENRATER: Good afternoon, Your Honor.
5 Catherine Heitzenrater of Duane Morris LLP for The Chubb
6 Companies, and I am joined by Richard Williams of Bullivant
7 Houser.

8 THE COURT: All right. And on behalf of the
9 parties responding to that motion, that is Shelley S.
10 Hawkins.

11 MR. YOUNGBLUT: Good afternoon, Your Honor. Or
12 good morning here from cloudy Seattle. Dan Youngblut
13 appearing on behalf of Shelley Hawkins from the law firm of
14 Foster Garvey.

15 THE COURT: All right. And let me find out who
16 else is here in terms of getting appearances.

17 MR. HARNER: Good afternoon, Your Honor. Paul
18 Harner of Sheppard Mullin LLP in New York appearing as the
19 fee examiner, and with me is Tobey Daluz of the Ballard Law
20 Firm in Philadelphia who is counsel to the fee examiner.

21 THE COURT: All right. Good afternoon to you
22 both. And any other appearances?

23 MS. LIEBERMAN: Good afternoon, Your Honor. Donna
24 Lieberman, Halperin Battaglia Benzija for Relator Carl
25 Ireland, and hopefully I am just monitoring this afternoon.

1 THE COURT: All right. Good afternoon to you as
2 well. All right. So I do have a copy of the Notice of
3 Agenda that was filed on the docket that contains a fee
4 matter and then a contested matter. And so I'll turn it
5 over to Debtor's counsel first to see if there's any
6 preliminary matters before we dive into the Agenda.

7 MR. DIDONATO: Thank you, Judge. Nothing.
8 Nothing before the Agenda.

9 THE COURT: All right. So then I guess we will
10 turn first to Roman Numeral I, Number I, the second final
11 joint application of the fee examiner and Ballard Spahr as
12 counsel for the fee examiner. And I'll turn that over to
13 the fee examiner or -- and/or his counsel.

14 MR. HARNER: Good afternoon, Your Honor. It's
15 again Paul Harner as -- appearing as the fee examiner with
16 Mr. Daluz as counsel for the fee examiner. This second
17 final fee application essentially is for the period
18 beginning on July 1st of this year and through the
19 conclusion of the case. As Mr. Fail indicated, the notice
20 of effective date of the plan was filed recently and
21 occurred only a matter of days ago. There have been no
22 objections filed to this second final fee application either
23 as to the fee examiner's fees or Ballard Spahr's fees. And
24 accordingly, unless the Court has any questions, in the
25 absence of such objections, we would request that the Court

1 approve the application as filed.

2 THE COURT: All right. Thank you very much. Is
3 there any party who wishes to be heard in connection with
4 this application of the fee examiner and his counsel? All
5 right. Hearing no responses, I did take a look at the
6 application as well as the backup certification in support
7 and the fee statements as well as some of the entries on the
8 docket. Judge Drain certainly has -- he kept himself
9 involved to try to get a lot of things resolved in this
10 case. I have chided him that he perhaps needs to look up
11 the definition of the word retire in the dictionary. But he
12 graciously did that so that he could preside and bring to a
13 conclusion things with which he was very familiar.

14 And so not being familiar, I took a look at the
15 docket to just get up to speed on all the great and glorious
16 things that have been going on up through August 31st in
17 this case. And so based on the materials I have before me
18 and my review of the docket, I'm happy to grant this
19 application as appropriate under the facts and circumstances
20 and applicable law, and to please submit a proposed order
21 electronically to us so we can get that entered. Thank you
22 very much.

23 MR. HARNER: Your Honor, we'll -- I apologize,
24 Your Honor. I think I talked over you right at the end. We
25 intend to settle an order with the Debtors and upload it on

1 the system in due course. And with that instruction, Your
2 Honor, may Mr. Daluz and I be excused for the remainder of
3 the hearing?

4 THE COURT: Absolutely. And I reject your
5 apology. The -- these Zoom hearings are a bit challenging
6 in that regard, and so all good, yes. And please go about
7 the rest of your day. Be well.

8 MR. HARNER: Thank you very much, Your Honor.

9 MR. DALUZ: (Indiscernible), Your Honor.

10 THE COURT: All right. Thank you. And so with
11 that, the next matter on the Agenda is the contested matter,
12 which is Number II, the motion of The Chubbs Companies for
13 an entry for various relief relating to an alleged violation
14 of the automatic stay. And so it is The Chubb Companies'
15 motions, so I thought I would hear from them first, and then
16 I'll hear from the objecting party, and then from anybody
17 else who wishes to be heard.

18 I will just as -- by way of sort of helping to
19 tell you what you need to do or not need to do, I have
20 looked very carefully at the papers, all the papers that
21 were filed, the motion, the objection, the reply. I have
22 timelines put together of the events here, so I mention that
23 just because when I was in your shoes, you never know how
24 much time the judge has or hasn't been able to spend on the
25 papers. And so oftentimes you sort of have to start in the

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1 beginning kind of mindset and go through everything chapter
2 and verse. So you don't have to do that here. So instead,
3 I can kind of say probably will cut you off and ask a bunch
4 of questions that I have regarding your different positions.
5 So with that, I'll turn it over to The Chubb Companies.

6 MS. HEITZENRATER: Thank you, Your Honor. Again,
7 Catherine Heitzenrater of Duane Morris LLP for The Chubb
8 Companies. Then I'm also, as I noted before, joined by
9 Richard Williams from Bullivant Houser, who's working on
10 behalf of Ace American, one of The Chubb Companies in the
11 state court action. So thank you, Your Honor, for your
12 instruction. I will not belabor all of the facts here given
13 that you have a good handle on them.

14 I do want to focus on three main points today, and
15 the first is that the motion is properly before the Court.
16 The second is that the Court has the ability to grant the
17 requested relief, and the third is that the requested relief
18 is necessary to right the wrongs of the stay violations and
19 to protect the sanctity of the automatic stay.

20 THE COURT: So let me -- at the risk again of
21 interrupting what no doubt is a beautiful presentation, jump
22 to some questions I had about Number III.

23 MS. HEITZENRATER: Okay.

24 THE COURT: It seems like there's no dispute that
25 -- I mean, the three events are the default judgment, the

1 first settlement, and the second settlement. The default
2 judgment was vacated, and the first settlement never became,
3 I guess, effective. And you can debate what that means or
4 not, but I guess it wasn't court approved. So assuming that
5 I agree with you that those events, which occurred before
6 the stay was lifted or amended to allow actions, are void ab
7 initio, does that ruling have any practical effect as to
8 those two first events, the default judgment and the first
9 settlement?

10 MS. HEITZENRATER: I think it would have a
11 practical effect, Your Honor. I think it would be helpful
12 for the state court to know that that is indeed the case.
13 It's also our position, Your Honor, that the vacating of the
14 default judgment simply to make way for the larger
15 confession of judgment that was gotten only through the
16 second settlement agreement, you know, doesn't undermine the
17 fact that those things were stay violations and that
18 everything that occurred after is based on those things that
19 were void.

20 THE COURT: All right. So as to the third
21 component here, which is the second settlement, it seems
22 pretty clear that that happened after the stay was lifted.
23 And if I'm -- so if I'm right that the settlement between a
24 debtor and a non-debtor, there were some attempts in state
25 court to essentially challenge that. And if that's not

1 technically a stay violation because it happened -- I
2 understand you're sort of, to borrow from criminal law,
3 fruit-of-the-poisonous-tree kind of argument, but if the
4 validity of that has already been challenged in state court
5 and is between a debtor and non-debtor, I guess my question
6 is sort of one about federalism and what my role here
7 properly is and isn't.

8 So to make a long question even longer, I
9 understand the idea of policing the automatic stay, and so I
10 get it for the first two events. But for the third event,
11 I'm not quite sure what it is that I'm -- you're asking me
12 to actually do because I don't have a -- I don't think I
13 have -- it's appropriate for me to be the one to essentially
14 challenge the bona fides of the settlement. That I think
15 has to go to state court.

16 Like, oh, is there something coercive or collusive
17 or whatever. That, to me, seems to be something that the
18 state court was asked to look at and did, and so I'm
19 struggling with what my role is as to that third event.

20 MS. HEITZENRATER: So you're right. Your Honor,
21 we're not asking you to rule that the second settlement
22 agreement was itself coercive. We're not asking you to rule
23 on the substance of that. What we're asking you to do is
24 say that a settlement that is based on stay violations that
25 were undisclosed to this court cannot -- is not effective.

1 It is also --

2 THE COURT: But how do I know that? So he had
3 counsel, and there are various statements on the record
4 about things. I suppose if I could identify the impact on
5 the Debtor, because after all the stay protection is to
6 protect the Debtor, then we could sort of anchor our inquiry
7 that way, but I don't have that here. So I really am
8 struggling with what the analysis is supposed to be, and I
9 didn't really see any case law that was cited to me that
10 sort of adopted a fruit-of-the-poisonous-tree kind of an
11 analysis.

12 They all seem to have something else going on that
13 the -- you know, the Debtor had this impact or whether it
14 was -- it was still covered by the stay or something else.
15 And so I was sort of struggling to sort of figure out what
16 -- if you were to ask me to write a decision what the
17 decision would actually look like in your favor on this
18 third event.

19 MS. HEITZENRATER: What it would look like, Your
20 Honor, is a ruling that, if a plaintiff violates the
21 automatic stay for two years, comes to a bankruptcy court
22 and asks to lift the stay without disclosing those stay
23 violations, that using the -- those stay violations, which
24 were void, cannot inure to the benefit of that claimant.

25 THE COURT: I --

1 MS. HEITZENRATER: That that would permit --

2 THE COURT: I got you up to using those stay
3 violations. So I don't know quite -- I understand
4 practically what you mean. You mean to say that the past is
5 prolonged to this third event, but I -- if I have a
6 statement from the party and from counsel saying, well, we
7 went through it, we looked at it, and this is what we came
8 up with. And if there's -- you know, I'm having trouble
9 understanding, you know, this is sort of used, it seems to
10 inevitably seems to be a way of collaterally attacking the
11 validity of that settlement. I don't know if you can do --
12 get the relief you want without essentially doing that to
13 say the settlement's improper.

14 MS. HEITZENRATER: Well, I think, Your Honor, the
15 reason that it's improper is because it is based on those
16 prior improper actions. And I think that the -- that Mr.
17 Miguel's statement in his affidavit is belied by his
18 deposition testimony, which says that he signed both
19 settlement agreements due to his stress related to --

20 THE COURT: But that's a collateral attack on the
21 settlement, right? I don't know that I have -- I don't
22 really want to turn this into a jurisdictional treatise, but
23 I don't know how -- my jurisdiction for this I understand is
24 really anchored in the automatic stay. And I think some of
25 these arguments have already been presented to the state

1 court. So I'm wondering what I can appropriately address or
2 not on that. Because again, I understand you said I don't
3 want a collaterally attack that thing here, but when you
4 describe what it is that the substance of the argument, it
5 seems an awful lot like a collateral attack I've got to say.

6 MS. HEITZENRATER: Well, Your Honor, these
7 arguments have not been made at the state court. The result
8 of -- you know, the impact of them being -- these actions
9 being void as a violation of the automatic stay has not been
10 made at the state court. Do you think that it has --

11 THE COURT: No, but hasn't the argument been made
12 that the settlement was improper and that it was the -- so
13 explain to me what actually -- rather than have me guess and
14 then have you try to straighten me out, what is -- actually
15 was presented to the state court and what was the ruling?

16 MS. HEITZENRATER: Your Honor, if it's all right
17 with you, I might pass that question to Richard Williams who
18 is better versed, I would say, in the detailed facts of what
19 has and hasn't been presented to the state court.

20 THE COURT: Oh, that would be fine. Mr. Williams?

21 MR. WILLIAMS: Good morning, Your Honor. So I
22 assume, Your Honor, are you speaking of the reasonableness
23 hearing that occurred where the court basically -- the state
24 court blessed the settlement agreement?

25 THE COURT: Yeah.

1 MR. WILLIAMS: That -- okay. So that -- at that
2 posture, what was submitted to the court without any oral
3 argument was simply Mr. Traverse's declaration, Miguel's
4 declaration. It was by all accounts an unopposed motion
5 where the court, you know, from our position at least, the
6 court did not have all of the pertinent facts of the
7 bankruptcy stay or anything like that before them. So in
8 that respect, it wasn't -- you know, it's not the same
9 issues that are being brought up today I guess if that makes
10 sense. We're not trying to relitigate --

11 THE COURT: Yeah. No, no.

12 MR. WILLIAMS: -- the (indiscernible).

13 THE COURT: I got it. There was essentially a
14 record presented. There wasn't really a live controversy
15 about any of those issues. And so before I go any further,
16 I do want to make it clear that I think there was a fairly
17 egregious violation of the stay as the first two items,
18 right? I don't think it's disputed. Essentially I
19 understand the argument to be that that particular improper
20 set of actions has been defanged by having the default
21 vacated and the first settlement didn't amount to anything.

22 But I guess -- and I don't know if this is for
23 you, Mr. Williams, or for other counsel, if the
24 reasonableness of the settlement is before the state court
25 and you didn't have these, isn't this another issue to

1 present to the state court about, you know, whether it's
2 improper influence or the things that this person felt like
3 they couldn't say no to or whatever it is? I just don't --
4 I just -- it seems like for me to do something like
5 essentially vacate the third settlement -- see, I am by
6 necessity saying that even though the stay had been lifted,
7 that there was something improper about that settlement or
8 that process, which seems to me to be the -- you know, the
9 province of the state court between two non-debtors. Am I
10 missing something on that? And again, I'll -- I don't know
11 who's the right person to chime in on that.

12 MS. HEITZENRATER: I can take that one, Your
13 Honor. From our perspective, we think that you do have the
14 authority to weigh in on that and essentially to say that
15 these egregious violations of the automatic stay do sort of
16 roll over into a second settlement agreement and
17 (indiscernible) --

18 THE COURT: But wouldn't I have to have evidence
19 on that? Isn't that something -- right, so they had a
20 reasonableness hearing. If you knew all these things at the
21 time, you could've contested it, and you would've had it --
22 it's not reasonable given all these things. So I certainly
23 am more than happy to say that I find that there was an
24 egregious violation of the stay in seeking the default
25 judgment and in negotiating the first settlement, and

1 everything up to and just before the stay was lifted, and
2 that there was, you know, a disappointing lack of candor
3 with the court in coming in and seeking that without saying,
4 hey, by the way, you should know, Judge, in the interest of
5 full transparency.

6 But I'm having trouble with the last thing you
7 want me to do, which is to say to nuke the settlement. I
8 don't know -- I don't want to bless the settlement, but my
9 question is whether the appropriate thing to do is to say I
10 can tell you that there's an egregious violation of the stay
11 and on -- these two events, and the degree to which those
12 improper actions led to an improper settlement that I'll
13 leave to the province of the trial court to consider in
14 light of all the facts and circumstances, and to let that
15 court do what they think is appropriate upon proper
16 application.

17 It's just that I think I'd need to have a --
18 essentially a reasonableness hearing on the settlement in
19 order to do that, and that's where I -- that pesky
20 federalism doctrine kicks in where I just don't know how far
21 -- I certainly, again, have no problem making very clear
22 what my views are about the violation of the stay. And I
23 don't -- and that even if the default was vacated and the
24 first settlement wasn't effectuated, it's a serious
25 violation. And we -- you know, it's hard to know what would

1 happen if you unring the bell and all that sort of stuff,
2 and we need to be very careful in policing those -- that
3 line.

4 But as to the reasonableness of the settlement
5 between two non-debtors in state court in the state court
6 action, that I'm having some concerns about going that far
7 and anchoring that in an automatic stay decision. So I
8 don't know if you have anything else to say. I know I just
9 gave a speech, but as I said, I've spent a bunch of time
10 looking at these papers and thinking about the papers. So
11 you sort of had me at hello on the first two events and that
12 they are void ab initio because they are.

13 It's the third one that I'm just struggling with.
14 I don't want to reward a violation of the automatic stay.
15 Nobody who sits in this chair wants to do that, but I just
16 am having trouble with the mechanics of what relief would
17 look like as to that third event. But again, counsel, I
18 appreciate the colloquy back and forth. So you can feel
19 free to address that or anything else that you wanted to say
20 before I peppered you with a million questions.

21 MS. HEITZENRATER: No, I appreciate that, Your
22 Honor. I'm happy to address standing and jurisdiction and
23 those sorts of matters. But if Your Honor doesn't feel like
24 you need argument on those, I'm also happy to defer.

25 THE COURT: Well, I guess I would say if you -- I

1 don't know if any of what you were planning to say touches
2 on this discussion we're having here about this third event
3 and the implications for what I can appropriately do or
4 can't, that may in fact be a jurisdictional issue in terms
5 of what I can do and what I can't do. But -- so I certainly
6 would be interested in hearing your views on that.

7 MS. HEITZENRATER: Okay. Well, thank you, Your
8 Honor. I do think that the -- from a jurisdictional
9 perspective, and I certainly understood Your Honor's point
10 with respect to impact on the estate, but I think that that
11 goes to related to jurisdiction as opposed to what we have
12 here, which is clearly arising under jurisdiction. So I do
13 think that this court plainly has jurisdiction under 1334 of
14 the Bankruptcy Code because issues related to the
15 application of the automatic stay arise under the Bankruptcy
16 Code.

17 And the Second Circuit has specifically found that
18 any relief for a violation of the stay must be sought in
19 bankruptcy court. And so from that perspective, I don't
20 think it's particularly new, Your Honor, from our pleadings,
21 but we do think that the jurisdiction is there.

22 THE COURT: All right. That's helpful. Anything
23 else, counsel? Or do you want to defer any other comments
24 until I hear from the other side?

25 MS. HEITZENRATER: I think we have touched on

1 largely the remainder of my argument, Your Honor, in the
2 colloquy.

3 THE COURT: All right. All right. Thank you very
4 much. And again, I appreciate your willingness to sort of
5 have a discussion out loud. It's very helpful even if it
6 does violence to your presentation. I appreciate that
7 having been on the other side, and so with that, let me hear
8 from the other side.

9 MR. YOUNGBLUT: Well, good afternoon, Your Honor.
10 And again, good morning here in cloudy Seattle. Thank you
11 for the opportunity to appear here today. Just as a couple
12 of brief housekeeping matters before I get into the bulk of
13 it, Your Honor, I'm appearing alone today because Mr.
14 Traverso, who is Shelley Hawkins' primary counsel and really
15 the only lawyer involved in the Washington state court
16 litigation is actually in the hospital right now with his
17 wife who is delivering a baby girl.

18 THE COURT: Oh, good. I thought --

19 MR. YOUNGBLUT: As (indiscernible) --

20 THE COURT: -- you were going the inevitable
21 because of COVID and that was going to (indiscernible), so
22 that's happy event. Congratulations perhaps prematurely,
23 perhaps not, these things happen very quickly to him. And
24 that -- I would characterize that as a very fair excuse.

25 MR. YOUNGBLUT: A fair excuse, Your Honor, and

1 very exciting for Mr. Traverse. So perhaps less so for me
2 because I'm less familiar with state court litigation and
3 I'll be presenting our whole argument, but that's okay.

4 THE COURT: That's...

5 MR. YOUNGBLUT: And Your Honor, I have my remarks
6 here. I had, frankly, a longer form version and a shorter
7 form version. I'm going to pivot over to the shorter form
8 version, but you know, I understand Your Honor is very
9 familiar, as you mentioned, with all the pleadings and the
10 facts. So please feel free to do violence, interrupt, let
11 me know where you want me to go. I will take no offense.

12 THE COURT: So I will take you up on your kind
13 offer and certainly --

14 MR. YOUNGBLUT: Sure.

15 THE COURT: -- return to where I was chatting with
16 counsel for Chubb, which is I don't think there's any debate
17 that the two events are the first two events, that is the
18 defaults and the first settlement agreement violate the
19 automatic stay. I think everybody would agree with that.
20 Is that right?

21 MR. YOUNGBLUT: Your Honor, I want to say that,
22 you know, just as an initial remark and then I'll address
23 your question directly, I can't sit here with a straight
24 face and say it is my favorite fact pattern of all time. I
25 can't.

1 THE COURT: No. Well, that's where I think you
2 can just simply say, yes, they do and move on. Because I
3 think it's hard to argue that they don't, and that's
4 probably a conversation that you don't want to have with a
5 bankruptcy judge. But let me -- I'll move on from there.
6 So the -- my concern is no bankruptcy judge ever wants to
7 reward a party for violating the automatic stay, right?
8 Bankruptcy is poorly understood in a lot of orders, and
9 state court judges have their hands full with plenty of
10 other substantive things. That's completely understandable.

11 And whenever bankruptcy judges get things to try
12 to understand, like a separation and divorce decree and its
13 impact on bankruptcy, we -- we're walking the other side of
14 that line. And so I certainly -- none of this is meant as a
15 disrespect for the state court, but they may be like, well,
16 whatever. It's not -- you know, somebody will tell me if
17 it's a problem. If not, I'm going to go ahead.

18 But it's pretty clear that there are violations of
19 the stay as to the default and as to the first settlement
20 agreement. I understand those have essentially been
21 defanged by virtue of the default being vacated and the
22 first settlement really being superseded by the second
23 settlement. So your -- opposing counsel is sort of
24 grappling with the notion that there's something
25 fundamentally unfair about the second settlement because

1 it's -- it has the history of everything that leads up to
2 it. And the question is, is that -- how does that history
3 play into whatever the requested relief is. So I am
4 concerned about not rewarding what is improper bankruptcy
5 behavior in terms of violating the automatic stay by virtue
6 of a blessing, although I don't think I would ever go that
7 far, the second settlement. And so what can you tell me in
8 response to that concern?

9 MR. YOUNGBLUT: Well, Your Honor, I think there
10 are sort of two narrative streams going on here. I think
11 one is in the Ace American side of things. I think there's
12 a lot of factual speculation. There's a lot of emphasis on,
13 you know, Miguel was stressed. Why was he stressed? Stuff
14 like that. And then there's the factual record that you
15 have before this Court, which is that once the stay relief
16 order was entered on April 5, 2021, the parties renegotiated
17 a settlement, a brand new settlement. It did look a lot
18 like the first settlement. No one can dispute that.

19 But Miguel was represented by counsel. Counsel
20 could've advised him, you know, hey, you know, look at all
21 these egregious actions that Plaintiff's counsel undertook.
22 You know, we think you should contest that. Or you know,
23 hey, let's get Ace American involved here, and I'm happy to
24 go into Ace American's involvement or lack thereof if Your
25 Honor deems it relevant. But the fact of the matter is the

1 evidence before this Court in the form of the declaration
2 from Miguel sworn under penalty of perjury, the declaration
3 from Miguel's attorney sworn under penalty of perjury is
4 that they entered into the second settlement agreement
5 freely, voluntarily, and upon advice of counsel because it
6 was a good deal for Miguel.

7 THE COURT: I get that, but putting aside looking
8 into the minds of those individuals, which I think is not
9 for me, the -- my right to settle then actually was for a
10 number three times higher than the default. And --

11 MR. YOUNGBLUT: I --

12 THE COURT: -- and I would say that that's not a
13 normal fact pattern, right? So -- and I don't have to know
14 a lot of anybody's state of mind to have that -- have me
15 raise an eyebrow. So what can you tell me about
16 understanding that?

17 MR. YOUNGBLUT: Your Honor, the settlement amount
18 -- I apologize preemptively because Mr. Traverse obviously
19 is more versed in that than I am, but my understanding is
20 that the change in the number -- and I'm going to use round
21 numbers just for ease of argumentation -- from about 500,000
22 to about 1.5 million was due to an evolution of the damages
23 that the Plaintiff suffered as a result of the car accident.
24 Default judgment was obtained --

25 THE COURT: Right, but the default is for a sum

1 certain, and then you get whatever you get because you've
2 already liquidated the amount to a certain amount. And you
3 get interest or whatever else it is, and you don't get more.
4 I don't know how you get more, right? Because the case is
5 concluded and it's stare decisis, res judicata, collateral
6 estoppel, whatever label you want to throw on it. So it's
7 not an open matter. It's not like, you know, so say you had
8 a default, as might be the case in a federal court, on
9 liability in a default. So the judge issues a default issue
10 on liability. And since I don't know what the damages are,
11 it's not a sum certain, I'm going to hold an inquest to
12 figure out damages because that's what you do in the federal
13 system, and that's still open.

14 And then the number that's in the complaint is
15 450,000, but the number that you end up after the inquest is
16 1.5 because, well, it's just a moving number. But there is
17 a judgment with a liquidated amount. So again, I appreciate
18 that you're pitch-hitting here, so -- and I know this is
19 pretty much in the weeds, but that's a fact that sort of is
20 hard to miss. And so, you know, so someone says, well, the
21 counsel was chosen by him. And I'm like, well, but I have a
22 -- there's a declaration saying we all made this, you know,
23 settlement for whatever.

24 But the number does jump out at me in the context
25 of saying like, well, these people were using the default as

1 a -- sort of a sword, which is not uncommon and not
2 necessarily improper, except the default itself is void ab
3 initio. So what -- anything else you can tell me on that
4 particular point?

5 MR. YOUNGBLUT: Yeah. Yes, Your Honor. I think
6 I'd make three observations with respect to that. I think
7 one is to the extent Your Honor is prepared to rule today or
8 whenever Your Honor issues a ruling, that the default
9 judgment is void ab initio, then I think those ideas about
10 being like we'll have the case in, you know, similar
11 documents. I think those are tossed to the side. The
12 default judgment being void ab initio --

13 THE COURT: No, it's your client --

14 MR. YOUNGBLUT: -- (indiscernible).

15 THE COURT: -- I don't think gets the benefit of
16 that. It's being declared void ab initio not for your
17 benefit, right? It's being declared void ab initio because
18 your client took actions that it shouldn't have taken given
19 the existence of the bankruptcy and the stay. And so I
20 don't know that you could benefit from that. Again, it's as
21 if it never happened, which is if, you know, just a typical
22 lawyer concept that the rest of the world has trouble
23 understanding that you've literally unrung the bell. But I
24 don't think you can say, well, because it never happened
25 void ab initio, it doesn't exist for purposes of

1 understanding the fact pattern and whether there was sort an
2 undue influence here.

3 I don't -- it doesn't -- I don't think it works
4 that way because then I can't sort of assess what the impact
5 is on the third event and whether that -- counsel's granting
6 the relief that's requested. So other thoughts you might
7 have on that?

8 MR. YOUNGBLUT: Yes, Your Honor. I understand the
9 point you're making, and two more points on this, Your
10 Honor. At the time the second settlement agreement was
11 executed, and part and parcel of that was the confession of
12 judgment, which has the higher number that Your Honor's
13 referring to, Miguel was represented by counsel. Counsel
14 has a fiduciary duty to Miguel, and counsel could have said
15 -- and I'm just speculating here, I'm obviously not Miguel's
16 counsel -- you know, hey, we shouldn't agree to a 1.5
17 million figure. We had this, you know, lower figure, the
18 500,000, just to use a round number again, let's stick with
19 that.

20 Miguel didn't. Miguel and his counsel agreed to
21 the higher number. And then perhaps more importantly, Your
22 Honor, that settlement was put forth to the state court, and
23 the state court has an independent obligation under
24 Washington law to assess the reasonableness of any
25 settlement that was before --

1 THE COURT: Right, but if they --

2 MR. YOUNGBLUT: -- a court.

3 THE COURT: If they don't know the facts, they
4 can't necessarily do that, right?

5 MR. YOUNGBLUT: Well, that's certainly true, Your
6 Honor. I wasn't there for the reasonableness hearing. I
7 don't know if it was very robust, not robust. I frankly
8 just wasn't --

9 THE COURT: No, but I'm saying nobody really --

10 MR. YOUNGBLUT: -- there, but --

11 THE COURT: -- nobody knew -- I understand the
12 representation from Chubb is that nobody -- Chubb didn't
13 know of the -- that this was going on, was in violation of
14 the automatic stay, and it's unclear whether there was any
15 record made at all as to the impact or lack thereof of the
16 bankruptcy on this because the record's blank on that. So I
17 assume it wasn't -- I don't want to flatter myself. People
18 aren't going to address that unless they think there's a
19 reason to address it, and it sounds like it wasn't addressed
20 at all.

21 MR. YOUNGBLUT: Your Honor, I frankly -- I'm just
22 not certain as to how, when, and under what circumstances
23 the bankruptcy law stay extension order, if you will, was
24 addressed in the state court. But you know, what I can say
25 is the settlement was approved by the state court at a

1 reasonably hearing. I don't want to say reapprove, but
2 there was a decision from the state court a little less than
3 a month ago which sets forth a whole bunch of facts that I
4 think have dispelled the notion that Ace American didn't
5 really know what was going on here. And the state court in
6 this October 7th ruling states pretty clearly that this --
7 the agreement, the settlement agreement that is as approved
8 by the state court is no longer subject to collateral attack
9 under state law.

10 THE COURT: All right. So what else would you
11 like to tell me in the context of the motion?

12 MR. YOUNGBLUT: Well, Your Honor, I think I'm
13 going to jettison my full remarks here and just say -- you
14 know, I want to reiterate I'm a bankruptcy lawyer by
15 training. So I get the importance of the automatic stay.
16 And like I said, Your Honor, this is not my favorite fact
17 pattern. I can't say that. What I can say with a straight
18 face is that I don't think the facts and the law support the
19 relief that Ace American is seeking here.

20 As Your Honor observed, what Ace American is
21 essentially advancing is somewhat akin to a fruit-of-the-
22 poisonous-tree idea. I've been calling it in my head the
23 Tracing Doctrine, but it's the same basic thing. And Your
24 Honor, I just don't think there's any legal support for
25 that. And I would refer Your Honor respectfully to the

1 Bolus, I believe I'm pronouncing that correctly, case. The
2 report -- the reporter cite being 2022 Westlaw 3948685 from
3 the Bankruptcy Court for the Middle District of
4 Pennsylvania. And there, I think there was a much closer
5 connection between an order that violated the automatic stay
6 and one that the court found did not.

7 And I think here, it's much clearer that the
8 second settlement agreement and the two related state court
9 orders that followed are standalone. Second settlement
10 agreement being executed two and a half months after the
11 stay relief order, the state court orders following that
12 being brought to the state court's attention by way of
13 motions filed well after the stay relief order. And I just
14 don't think there's any legal support for that Tracing
15 Doctrine.

16 And Your Honor, I know we've also -- the papers
17 refer a lot to jurisdiction and waiver and standing. And
18 you know, I think our positions are fairly clear in the
19 papers there. If Your Honor has any questions on those, I'd
20 be happy to into that or anything else Your Honor might want
21 to consider. But with that, I'm happy to rest and take any
22 other questions Your Honor may have.

23 THE COURT: All right. So let me ask you if you
24 have any oppositions or objection to a ruling that the first
25 -- that the default and the first settlement are void ab

1 initio given the existence of the stay.

2 MR. YOUNGBLUT: Your Honor, that's on -- that's a
3 hard question for me to answer. I think in a vacuum, no, I
4 do not oppose that. However, a lot of what I had in my
5 prepared remarks, which I can pivot to just very briefly
6 here, goes to this notion of I'm just not sure why, given
7 that the default judgment had been vacated and the first
8 settlement agreement is totally dead, exactly why that
9 relief would be necessary for --

10 THE COURT: Well --

11 MR. YOUNGBLUT: -- Ace American. To me it's
12 almost (indiscernible).

13 THE COURT: -- I guess my thought would be to the
14 extent that I'm uncomfortable essentially holding what might
15 be akin to a reasonableness hearing on the second
16 settlement, my thought would be to essentially give the
17 state court an appropriate set of views by the bankruptcy
18 court as to the bankruptcy issues by saying let there be no
19 mistake, the first default and the first settlement are void
20 ab initio because they violate the automatic stay. They
21 were entered into before that stay was lifted.

22 And to the extent, you know, the request by Chubb
23 for the Court to analyze the second settlement in light of
24 those violations of the automatic stay calls -- might call
25 for something that is sort of akin to or part of what would

1 be a reasonableness hearing as to whether something's
2 appropriate or not. Whether there was some inappropriate
3 leverage as a result of improper actions in violation of the
4 automatic stay, that that's really something for the state
5 court to consider in the first instance between these two
6 non-debtors. But then I'd want to make an appropriate
7 record for the state court to assess it and that they don't
8 have any doubts about what it means -- all these events mean
9 from bankruptcy point of view.

10 And that's why I think it might be relevant that
11 it's not a meaningless act to do that so that the state
12 court could say we didn't know anything about this. And so
13 we'll assess what it all means or doesn't mean, but the
14 bankruptcy court has told us -- now given us direction about
15 what -- how to consider for purposes of the bankruptcy.

16 MR. YOUNGBLUT: And Your Honor, that seems like,
17 between the two of these, that that's the direction Your
18 Honor wants to go. I would respectfully request that any
19 ruling or order from this court be equally clear as to what
20 I call the latter three targets of Ace American's motion,
21 i.e. the second settlement agreement. Your Honor, we feel
22 very strongly that all those things occurring well after --
23 clearly after the stay relief order was entered on April 5,
24 2021, that those are not stay violations. And Your Honor, I
25 think the concern from our side --

1 THE COURT: Well -- yeah, go ahead.

2 MR. YOUNGBLUT: Oh, I was just going to say the
3 concern from our side, Your Honor, is that the -- having a
4 federal court's declaration or ruling that the first
5 settlement agreement and the default judgment violate the
6 stay can really be sort of used to confuse the notion in the
7 state court. As Your Honor pointed out, state courts are --
8 they're jacks --

9 THE COURT: Well --

10 MR. YOUNGBLUT: -- of all trades, right? They're
11 doing divorces (indiscernible) --

12 THE COURT: Yes, and no.

13 MR. YOUNGBLUT: Yes, Your Honor.

14 THE COURT: I mean, but it's pretty clear that
15 they are, right? So I don't really see any version of this
16 where the -- I would conclude otherwise. And so from your
17 point of view having me not issue an order saying that the
18 third one is a violation of the automatic stay is somewhat
19 of a victory. But at the same time, you know, I trust the
20 state courts to have an appropriately sophisticated view of
21 things and to say, well, we'll sort of figure this out.

22 And there may be rulings we've made before or not,
23 and counsel can come back, and we'll do what we're going to
24 do in terms of it. But I have trouble separating out the
25 reasonableness of the settlement from the issues that are

1 being raised here about, well, you know, maybe because of
2 the default and the ability to use the default, that's why
3 someone ended up with this settlement. And then the second
4 settlement was really the first settlement, and that's all.
5 And so I don't know that I have a clear path in the case law
6 to actually say that that second settlement under these
7 facts is a violation of the automatic stay.

8 But I do have concerns about whether the first two
9 events, which I think are void ab initio, were somehow part
10 and parcel of the decision-making process where people ended
11 up in a certain spot. And again, I don't know that. And
12 for me to make that decision, I'm also then moonlighting as
13 a state court judge who has -- who sees cases like this all
14 the time and says, no, I know how to consider these sort of
15 things and what I should think about for a settlement or not
16 settlement, and reasonableness, or -- and all that sort of
17 stuff so under the applicable state law statutes.

18 So that's the other reason why I just think I'm
19 going to -- I would -- I bump into that. And that probably
20 not the best place for me to be. So anything else, counsel?

21 MR. YOUNGBLUT: No, Your Honor. I think -- just
22 to wrap up real quickly, I think, you know, Your Honor,
23 you've made yourself very clear with respect to the default
24 judgment and the first settlement agreement. I understand
25 Your Honor. You know, I would just again respectfully

1 request that any ruling -- I don't think it's far out of
2 bounds to say the second settlement agreement is not a
3 violation of the automatic stay. And then that leaves the
4 issue of, well, is the second settlement agreement
5 reasonable? Was it obtained as a result of coercion or
6 harassment or threats? That leaves all of those issues
7 appropriately with the state court, but at least sets the
8 record clear as to what all -- who therefore has the
9 bankruptcy implications of the various five events that Ace
10 American is challenging. And with that, Your Honor, I'm
11 happy to rest.

12 THE COURT: All right. And before I ask for any
13 final remarks from Chubb, I didn't know if the Debtor had
14 anything that it wanted to express on the record. After
15 all, the automatic stay is something meant to protect the
16 Debtor. And I know that there was an agreement between
17 Chubb and the Debtor here. And so with that, anything from
18 Debtor's counsel?

19 MR. DIDONATO: Thank you, Your Honor. Again, for
20 the record, Phil DiDonato, Weil Gotshal for the Debtors. We
21 don't have a position to take on this dispute. We -- as I'm
22 sure you noticed, we didn't file anything in connection, and
23 so we're really here just to observe today. Happy to answer
24 any questions you have, but nothing from us at this time.

25 THE COURT: All right. And I guess in taking that

1 no position -- position of no position, that it's -- it
2 doesn't impact the Debtor's states or cases in any way,
3 shape, or form?

4 MR. DIDONATO: That's correct, Your Honor.

5 THE COURT: All right. Thank you. All right.

6 With that, let me hear any final remarks or rebuttal remarks
7 from counsel for Chubb.

8 MS. HEITZENRATER: Thank you, Your Honor. I just
9 have one thing that sort of came to me as you were having
10 your colloquy with Mr. Youngblut, which is that when the
11 stay was extended to Miguel in January of 2019, that should
12 have stopped the action. So when the stay relief order was
13 entered, the parties should have been in the position that
14 they were in, in January of 2019. They clearly were not.

15 So essentially what we are asking for this Court
16 to do is to put the parties in the position that they should
17 have been in, in January of 2019 -- or I'm sorry, when the
18 stay relief order was entered, which is as it was in January
19 of 2019. And I think that the Court has the jurisdiction to
20 do that, has a rising under jurisdiction to enforce the
21 automatic stay, and to ensure that -- you know, that the --
22 there is an essentially a road map for future claimants to
23 take similar actions to simply ignore the protections of the
24 Bankruptcy Code.

25 THE COURT: Well, I guess my struggle with that is

1 that I haven't found cases that actually go down that road
2 where essentially the stay -- the argument from the other
3 side is that the stay is essentially harmless or de minimis.
4 Again, I'm not saying that. So for the first and second
5 event, I'm finding that they're void ad initio because they
6 clearly are. So I'm not finding sort of a Tracing case that
7 goes as far as you want me to go.

8 And the other thing I'm concerned about is the
9 cases that -- and you have to be very careful about laying
10 down hard and fast rules in this area because the minute you
11 think you understand all the potential fact patterns, a new
12 one pops along, this case being a good case in point. And
13 so -- but most of the cases that sort of take I would say
14 more attenuated steps, but I'm struggling with how else to
15 say it, but more aggressive steps on the automatic stay tend
16 to be ones that where you've got an implication on the
17 Debtor's estates or the case or the plan.

18 And I don't have that here. So in bankruptcy
19 they've always -- you know, it's always sort of a -- kind of
20 a theory that you always have to be wary of someone invoking
21 somebody else's equities. And so I understand your
22 frustration from your client's point of view, but at the
23 same time, you know, there's a question about, well,
24 couldn't they just turn around enter into the same
25 settlement now? And you know, I don't think there's

1 anything that would prevent them from doing that. So the
2 most I -- so that's why I'm sort of stumbling towards or
3 leaning towards a view where essentially I make clear what
4 my bankruptcy judge views are on the way things went down,
5 what was proper and what was improper, and then how that
6 impacts the decision. The reasonableness is something for
7 the state court to assess. Because I -- so if you had a
8 case that you wanted me to look at for purposes of this
9 Tracing/fruit-of-the-poisonous-tree kind of doctrine, what
10 case would you ask me to look at?

11 MS. HEITZENRATER: Well, Your Honor, while we are
12 focused on candor to the Court, we haven't cited one because
13 we haven't found one either. So I do think that these are
14 tricky issues. It is a very unique fact pattern, and we
15 appreciate Your Honor grappling with them in the way that
16 you clearly are. It is certainly our position that you have
17 the authority to enter the relief that we're requesting
18 under 28 USC 1334, but I unfortunately do not have a case to
19 point you to that has done this before.

20 THE COURT: All right. And I guess -- thinking
21 along those lines, I guess the argument that you have is,
22 Judge, we don't really know how these things are going to
23 work out in the fullness of time and whether they're going
24 to have an impact on the Debtor's estate or not. And -- but
25 people don't know that at the time. And so you can't reward

1 people for violating the automatic stay. And obviously,
2 that's not my intent at all. That's why I think any order
3 coming out of this has to make clear that those first two
4 events, in fact, are void ab initio. Because if nothing
5 else, it helps the state court understand how these things
6 work for any future cases that may come up and gets the word
7 out. So, all right. Anything else, counsel?

8 MS. HEITZENRATER: Not from me, Your Honor. Thank
9 you.

10 THE COURT: All right. And Mr. Williams, again,
11 because we're not here in-person where you can lean over and
12 talk to each other, I don't know if you had anything else
13 you wanted to add.

14 MR. WILLIAMS: No, Your Honor.

15 THE COURT: All right.

16 MR. WILLIAMS: Thank you.

17 THE COURT: All right. I do look forward to
18 seeing you all some day in court in person. That would be
19 nice. So I'm going to take this matter under advisement and
20 endeavor to get you all an answer promptly. This saga has
21 been playing out for an extended period of time, and so I
22 don't have a -- you know, I'm cognizant that you don't want
23 to delay it even further. But I will endeavor to get you an
24 answer promptly. And what I'll probably do is have chambers
25 contact you all and then let you know when I'm going to read

1 a decision onto the record, a bench ruling. So -- but we'll
2 be in touch promptly. And with that, the matter is
3 submitted.

4 And so with that, I will go back to Debtor's
5 counsel to ask if there's anything else that we need to
6 address here on the record today.

7 MR. DIDONATO: Thank you, Judge. Nothing further.
8 Appreciate your time as always, and look forward to seeing
9 you next time.

10 THE COURT: All right. And by the way, I will
11 say, since I've been trying to get the word out to counsel,
12 my -- speaking of being in-person or not being in-person, my
13 intent if COVID cooperates, and that's something I shouldn't
14 even say out loud, is to try to really set up hybrid
15 hearings in the not-too-distant future where people then can
16 participate however they want to participate.

17 I recognize that cases can benefit from getting
18 people together for negotiations. I had a case just the
19 other day where it was so clear that people would've
20 benefited from being in the courtroom. So that's my intent.
21 If the COVID numbers behave and stay the way are or go down,
22 to try to do that so that people can say, you know, I'm
23 going to be here in-person. Or they can say, no, I don't
24 feel so good, so I'm going to stay home and participate by
25 Zoom.

1 But we can just deal with whatever is appropriate.
2 And you all then can decide based on your cases whether you
3 want to be here in-person and sort of get the word out.
4 Because you know, frankly, much better than I do as to
5 whether that kind of in-person communication is useful or
6 not. I just figured I'd let you know I think judges are
7 pretty much -- and courts are pretty much all over the map,
8 I think, on things. But that's my hope is to basically have
9 our cake and eat it too. So that way people don't have to
10 worry am I on an in-person day or a COVID day. No, you just
11 come however you feel comfortable consistent with your
12 medical situation. So that's the hope in the not-too-
13 distant future, but we'll keep you informed. And with that,
14 thank you very much and we'll be in touch soon about a bench
15 ruling.

16 MR. DIDONATO: Thanks, Judge.

17 MS. HEITZENRATER: Thank you, Your Honor.

18 MR. YOUNGBLUT: Thank you, Your Honor.

19 (Whereupon these proceedings were concluded at
20 3:03 PM)

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I N D E X

RULINGS

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Fee Examiner Motion Granted

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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